

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed August 12, 2004. At the time of the Office Action, Claims 1-33 were pending in the Application. Applicant amends Independent Claims 1, 9, 17, 25, and 33 without prejudice or disclaimer. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 103 Rejections

The Examiner rejects Claims 1-7, 9-15, 17-23, and 25-31 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,119,014 issued to Alperovich et al. (hereinafter "*Alperovich*") in view of U.S. Patent No. 5,705,995 issued to Laflin et al. (hereinafter "*Laflin*"). The Examiner rejects Claims 8, 16, 24, and 32 under 35 U.S.C. §103(a) as being unpatentable over *Alperovich* in view *Laflin* as applied to Claims 1, 9, 17, and 25 above, and further in view of U.S. Publication No. 2001/0041571 A1 issued to Yuan (hereinafter "*Yuan*"). These rejections are respectfully traversed for the following reasons.

Applicant respectfully notes that the Examiner has failed to satisfy each of the elements of non-obviousness, which are required to support a proper §103 analysis. According to MPEP §2143, to establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to combine the references. Second, there must be a reasonable expectation of success. Third, the prior art combination of references must teach or suggest all the claim limitations. (See generally MPEP §2143.) As an initial matter, the Examiner has failed to meet his burden with respect to the third criteria of non-obviousness, as none of the references cited by the Examiner disclose all of the limitations of the pending claims.

For example, *Alperovich* cannot restrict the patentability of the pending claims because *Alperovich* fails to offer any system associated with "receiving an out-of-band message at a mobile unit and analyzing the message to determine if it contains pushed data,

wherein the pushed data reflects a server initiated data transfer that is based on predetermined criteria” as recited by Independent Claim 1, as amended. For this teaching, the Examiner ostensibly relies on *Alperovich*. However, *Alperovich* does not provide any disclosure associated with pushed data: much less pushed data that reflects a server initiated data transfer, which is based on predetermined criteria. Instead, *Alperovich* addresses an SMS protocol between two subscribers. (See Abstract and Summary Sections of *Alperovich*.) Moreover, there is nothing in *Laflin* or *Yuan* that offers this missing disclosure, nor is there anything in *Alperovich* that is combinable with *Laflin* or *Yuan* that would inhibit the patentability of Independent Claim 1. Evaluating these references more closely reveals that *Yuan* and *Laflin* do not provide any subject matter relevant to the patentability of the pending claims, as both *Yuan* and *Laflin* fail to offer a teaching, suggestion, or disclosure associated with the above-identified limitation.

For at least these reasons, Independent Claim 1 is allowable over the *Alperovich-Laflin* and the *Alperovich-Laflin-Yuan* combinations. In addition, Independent Claims 1, 9, 17, 25, and 33 include a limitation that is similar, but not identical, to that of Independent Claim 1. Accordingly, these Independent Claims are also allowable over the proffered combination. Additionally, the dependent claims corresponding to these Independent Claims are also allowable for analogous reasons. Thus, all of the pending claims have been shown to be allowable, as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these pending claims.

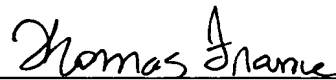
CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas Frame at 214.953.6675.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Thomas Frame
Reg. No. 47,232

Date: August 25, 2004

Customer No. **05073**